

720  
Maurice Fitzgerald, pro-se  
Crossroad Correctional Center  
75 Heath Road  
Shelby, Montana

FILED  
OCT 16 2000

IN THE SUPREME COURT OF THE STATE OF MONTANA

MAURICE FITZGERALD,  
Petitioner,

v.

JAMES MACDONALD, Warden of;  
Crossroads Correctional Center,  
Respondent.

PETITION FOR WRIT OF:  
CERTIORARI

Maurice Fitzgerald petitions this Court for a writ of Certiorari relief Pursuant to; Charles C. Apprendi Jr. v. New Jersey, [Cause Number: 99-478] "Supreme Court of the United States" (Decided June 26, 2000). cite as 120 S.Ct. 2348; 2000 U.S. Lexis 4304; 68 U.S.L.W. 4576; 2000 Cal. Daily Op. Service 5061; 2000 Daily Journal DAR 6749; 13 Fla. Law W. Fed. S 457.

1. Petitioner was arrested March 4, 1988 and charged with four counts under § 45-5-503, MCA. Petitioner pled "Not Guilty" to the charge. [One count was overturned by the Montana Supreme Court.]

The petitioner relies on the above case, to argue the "Due Process Clause" of the United States Constitution. U.S.C.A. § XIV which requires that a jury on the bases of proof beyond a reasonable doubt make the factual determination authorizing, an increase in the maximum prison sentence. [The petitioner's sentenced was enhanced from twenty years to forty years, due to the "bodily harm enhancement" which never was heard by the jury.] Because it is unconstitutional to remove from the jury, the assessments of facts that increases the prescribed range of penalties, to which petitioner was exposed. [the enhancement of twenty years]

In Jones v. United States, 526 U.S. 227, 143, L.Ed.2d.311, 119 S.Ct. 1215 (1999).

"Under the Due Process Clause" of the Fifth Amendment [U.S.C.A.5] and the notice and jury trial guarantees of the Sixth Amendment, any facts, (other than prior convictions) that increase the maximum penalty for a crime must be charged in indictment, submitted to a jury, [the "Bodily Harm Enhancement" was never submitted to the jury] and proven beyond a reasonable doubt." 526 U.S. at 243, [n.6] The Fourteenth Amendment Commands the same answer in this case involving the State Statute.

The "Due Process Clause protects the accused against convictions except upon proof beyond a reasonable doubt of every facts necessary to constitute the crime with which he is charged."

We pray this Honorable Court, can grant the Petitioner Relief in this foregoing matter

It has been found that "pro-se" litigants are not held to the stringent standards applied to formally trained members of the legal profession, accordingly "pro-se" complaints should be construed liberally. See e.g. Hughs v. Rowe, 449 U.S. 519, 9-10, 101 S.Ct. 173, 175-76, 66 L.Ed.2d 163(1980) (per curiam); Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595, 96 30 L.Ed.2d 652 (1972).

RESPECTFULLY Submitted this 11<sup>th</sup>, of October, 2000.

Maurice Fitzgerald  
Maurice Fitzgerald

**CERTIFICATE OF SERVICE**

I hereby certify that I served true and accurate copies of the foregoing  
"Petition for Writ of; Certiorari" by depositing said copies into the United  
States Postal Service, postage prepaid, addressed to the following:

Joseph P. Mazurek  
Attorney General  
215 North Sanders  
POB 201401  
Helena Montana 59620 1401

Yellowstone County Attorney  
Courthouse  
Billings Montana 59101

  
\_\_\_\_\_  
Maurice Fitzgerald

On the 11<sup>th</sup>, day of October 2000.